REMARKS

Applicant appreciates the courtesy of the teleconference on September 21, 2001. This Application has been carefully reviewed in light of the Final Official Action mailed July 24, 2001 and the referenced teleconference. In an effort to advance prosecution of this case, Applicant requests cancellation of Claims 1-8, 14-21, and 25 without prejudice or disclaimer. Claims 9-13, 22-24, and 26 remain pending. Applicant respectfully requests reconsideration and favorable action in this case.

Official Notice

Applicant notes that Examiner relies upon only one reference, U.S. Patent No. 5,919,247 issued to Van Hoff, et al. ("*Van Hoff*"), in his rejection of all of the claims in the instant Application. Despite the Examiner's burden to establish a *prima facie* case of obviousness, Examiner merely cites *Van Hoff* along with conclusory statements such as "common wisdom practice," "would become apparent", "would have been obvious," and "well known." In Applicant's response of April 27, 2001, Applicants seasonably traversed such statements as an attempt to take Official Notice, and requested that the Examiner cite references in support of these statements pursuant to MPEP § 2144.03. In response to this traverse, the Examiner refused to provide such references, stating:

> Applicants . . . have attempted to challenge the Examiner's common wisdom practice/Official Notice; however, Applicants have not provided adequate information or argument so that on its face it creates a reasonable doubt regarding the circumstances justifying the Official notice. Therefore, the presentation of a reference to

> substantiate the Official Notice is not deemed necessary. . . . *See* In re Boon, 169 USPQ 231 (CCPA 1971).

It is respectfully submitted that Examiner's reliance upon *Boon* is misplaced. First, the facts of *Boon* involve a situation where the taking of Official Notice was supported by the citation of a reference (a dictionary). Thus, there is nothing in the holding of *Boon* which even remotely stands for the proposition that a reference need not be cited on request in order to support an instance of Official Notice. Moreover, and more important, *Boon* related to the taking of judicial by the Board of Appeals. There is nothing in *Boon* that suggests *Boon* gives an Examiner the right to refuse to cite a reference in response to a traverse of an Examiner's taking of Official Notice. MPEP § 2144.03 itself cites *Boon* but does not even remotely suggest that the holding of *Boon* extends to Examiners. In fact, MPEP § 2144.03 has a completely separate paragraph which deals specifically with Examiners, and which specifies what must happen if an applicant challenges the taking of Official Notice by an Examiner. In particular, the MPEP expressly states that if "the applicant traverses such an assertion the Examiner should cite a reference in support of his or her position."

Section 102 of Title 35 of the United States Code specifies that an applicant "shall be entitled to a patent unless" the Patent Office successfully carries the burden of producing evidence to show that the invention is not patentable. By refusing to cite a reference in this support of the Official Notice taken in the present application, the Examiner is failing to provide the required evidence. The Examiner is attempting to shift to Applicants the burden of proving patentability, which is effectively the burden of

proving a negative, and the Examiner's approach is directly contrary to U.S. patent law. The Examiner has failed to cite any statute or case which supports his position that the PTO does not expect that an examiner will cite a reference when an applicant requests one. (As noted above, the only case cited by the Examiner is *Boon*, which involved a situation where a reference was cited to support the Official Notice).

In addition to failing to meet his evidentiary burden, the Examiner, by failing to provide references despite Applicant's explicit, proper, and seasoned requests to do so, denies the Applicant any meaningful opportunity to examine or challenge the statements made by the Examiner, and in doing so violates Applicant's right to administrative due process.

Information Disclosure Statement

Examiner states that "non-patent documents listed on the [Information Disclosure Statement] paper no. 2, in particular at pages 2-10 now being considered for the claimed merit of distributing and/or updating program subject matters only and not for, or regardless, unclaimed intrusion detection system and/or techniques per se, as Applicant acknowledged." Applicant respectfully states that Applicant recalls making no such acknowledgement and hereby traverses Examiner's statement to the extent that it reduces in any way the full consideration to which the IDS is entitled under USPTO rules and regulations.

Section 103 Rejections

As noted above, the Examiner rejects Claims 1-26 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,919,247 issued to Van Hoff, et al. ("*Van Hoff*"). Claims 1-

8, 14-21, and 25 have been cancelled without prejudice or disclaimer, rendering Examiner's rejections of Claims 1-8, 14-21, and 25 moot. Applicant respectfully traverses Examiner's rejections of the remaining claims pending in the Application. With respect to each of the pending claims, to the extent that the Examiner relies on "common wisdom practice" or supposedly "apparent," "obvious, "or "well known" knowledge, Applicant respectfully, and again, traverses these assertions and again requests pursuant to M.P.E.P. § 2144.03 that the Examiner cite a reference in support of the Examiner's position.

In rejecting Claim 9 under 35 U.S.C. § 103(a), Examiner simply restates his previous rejection language. Again, Applicant respectfully submits that nothing in the cited art suggests, as recited by Claim 9, restoring a first version of a program for operation at a network site when, after installation of a downloaded update, it is determined that the update is operating incorrectly. Applicant respectfully disputes Examiner's assertion that *Van Hoff* suggests such restoring. Instead, *Van Hoff*, as relied upon by the Examiner, merely teaches the use of a "holding space" to "store data received as part of update replies." *Van Hoff*, col. 9, ll. 11-12. The update reply commands are not immediately applied because "modification of program code or data may corrupt channel application 153 if that application is running at the time of the updates." *Van Hoff*, col. 9, lines 19-22 (emphasis added). "Instead the changes from holding space 156 are applied either when channel application 153 terminates, or when channel application 153 explicitly requests so, thus bringing the channel up to date." Col. 9, lines 23-25. Thus, *Van Hoff*'s teachings are limited to holding off an update until an application is ready. There is no teaching of restoring a first version of a program, much less determining

whether a second version is operating correctly. In addition, because the holding space of Van Hoff is for unapplied updates, there is no "means" for retrieving a previous version as asserted by the Examiner. Moreover, because *Van Hoff* waits until after "modification of program code or data may corrupt [the] channel application" before applying the change, there is no reason to add a restoration system to *Van Hoff* as it adds cost without benefit. Thus, Claim 9 is not taught or suggested by the cited art.

With respect to Claim 10, Examiner again simply restates his previous rejection language. However, as stated by the Applicant in his response to the Examiner's language, there is no suggestion or motivation in the cited art to add "distributing the downloaded update to a disparate network site operating the first version" as in Claim 10. In contrast, in *Van Hoff*, a transmitter process calculates client-specific differences and a set of commands used to update the channel data. Col. 5, lines 22-29. Because the channel update is client specific, it is unsuitable for this distribution. Thus, the modification to *Van Hoff* suggested by the Examiner would render *Van Hoff* unsuitable for its intended purpose as an update specific for one client would be applied to another client needing a different update. Therefore, Claim 10 is not taught or suggested by the cited art.

With respect to Claim 11, Examiner again simply restates his previous rejection language. Similar to Claim 10, Claim 11 recites distributing the downloaded update to a disparate network site operating the first version. Thus, Claim 11 is patentable over the cited art.

With respect to Claim 12, Examiner again simply restates his previous rejection language. The abstract of *Van Hoff*, relied upon by the Examiner, teaches against broadcasting

distribution of software. The abstract teaches that "the client initiates each update request without requiring any special broadcast networking infrastructure." Moreover, there is no teaching in *Van Hoff* for a program to automatically broadcast an update message to other programs, after an update has been automatically downloaded by the first program from a remote site. Thus, there is no suggestion or motivation in *Van Hoff* for "broadcasting over a network an update message" within the context of in Claim 12. Absent such suggestion or motivation, the rejection is improper. See MPEP § 2143.01.

With respect to Claim 13, Examiner again simply restates his previous rejection language. Claim 13, like Claim 9, recites restoring a first version of a program for operation at a network site when, after installation of a downloaded update, it is determined that the update is operating incorrectly. As above, Applicant respectfully submits that nothing in the cited art suggests, as recited by Claim 13, restoring a first version of a program for operation at a network site when, after installation of a downloaded update, it is determined that the update is operating incorrectly. Indeed, as discussed above, *Van Hoff* teaches against these elements.

With respect to Claim 22, Examiner again simply restates his previous rejection language. However, as above, there is no suggestion or motivation in the cited art to add intrusion detection sensors to "distribute the downloaded update to the remaining intrusion detection sensors for installation." Applicant thus respectfully submits that Claim 22 and its dependent Claims 23-24 are patentable over *Van Hoff*.

Conclusions

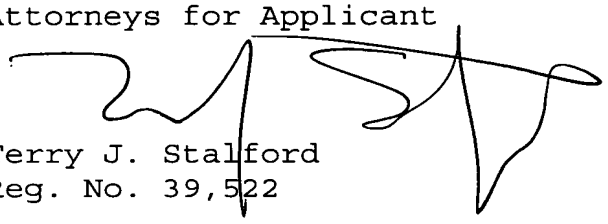
Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending Claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicant stands ready to conduct such a conference at the convenience of the Examiner.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant



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Marked-Up Version of Claim Amendments

For the convenience of the Examiner, all claims have been presented whether or not an amendment has been made. The claims have been amended as follows.

Please amend the claims as follows.

Please cancel Claims 1-8 without prejudice or disclaimer.

9. A method for updating a first version of a program operating at a network site, comprising:

in response to an automated event, automatically downloading from a remote site any update for the program;

installing a downloaded update to generate a second version of the program;

after installation of the downloaded update, determining whether the second version of the program is operating correctly;

in response to correct operation of the second version, operating the second version of the program in place of the first version at the network site; and

in response to incorrect operation of the second version, restoring the first version of the program for operation at the network site.

10. A method for updating a first version of a program operating at a network site, comprising:

in response to an automated event, automatically downloading from a remote site any update for the program;

installing a downloaded update to generate a second version of the program; and

operating the second version of the program in place of the first version at the network site;

distributing the downloaded update to a disparate network site operating the first version of the program;

installing the downloaded update to generate the second version of the program at the disparate network site; and

operating the second version of the program in place of the first version at the disparate network site.

11. A method for updating a first version of a program operating at a network site, comprising:

in response to an automated event, automatically downloading from a remote site any update for the program;

installing a downloaded update to generate a second version of the program;

after installation of the downloaded update, determining whether the second version of the program is operating correctly at the network site;

in response to incorrect operation of the second version, restoring the first version of the program for operation at the network site; and

in response to correct operation of the second version at the network site:

distributing the downloaded update to a disparate network site operating the first version of the program;

installing the downloaded update to generate the second version of the program at the disparate network site; and

operating the second version of the program in place of the first version at the disparate network site.

12. A method for updating a first version of a program operating at a network site, comprising:

in response to an automated event, automatically downloading from a remote site any update for the program;

installing a downloaded update to generate a second version of the program; and

operating the second version of the program in place of the first version at the network site;

broadcasting over a network an update message;

receiving in response to the update message a request for the downloaded update from each of a plurality of disparate network sites operating the first version of the program;

distributing the downloaded update to the disparate network sites requesting the downloaded update;

installing the downloaded update to generate the second version of the program at each of the disparate network sites; and

operating the second version of the program in place of the first version at each of the disparate network sites.

13. The method of Claim 12, further comprising:

receiving a recovery event at one of the network sites;

automatically restoring the first version of the program at the network site at which the recovery event was received;

broadcasting a recovery message from the network site over the network; and

automatically restoring the first version of the program at each of the remaining network sites operating the second version of the program.

Please cancel Claims 14-21 without prejudice or disclaimer.

22. An intrusion detection system, comprising:

a private network including a plurality of sites connected to a public network, each site including an intrusion detection sensor operating with a first set of intrusion detection signatures; and

each of the intrusion detection sensors operable to automatically download from a remote site any update for the intrusion detection signatures in response to a specified event, to install a downloaded update to generate a second set of intrusion detection signatures, to operate with the second set of intrusion detection signatures, and to distribute the downloaded update to the remaining intrusion detection sensors for installation.

23. The system of Claim 22, wherein the specified event is an automated event.

24. The system of Claim 23, wherein the automated event is a timed event.

Please cancel Claim 25 without prejudice or disclaimer.

26. The method of Claim 13 wherein the recovery event occurs in response to incorrect operation of the intrusion detection program.